IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 46 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHEMINOVA INDIA LTD.

Versus

SHREE CHEMPEST (INDIA) LTD.

Appearance:

1. COMPANY PETITION No. 46 of 2004

MR KH KAJI for Petitioner No. 1

MR MANISH K KAJI for Petitioner No. 1

UNSERVED-REFUSED (N) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 19/08/2004

ORAL JUDGEMENT

The petitioner has filed this petition under Section 433 (e) read with Section 434 of the Companies

Act, 1956 ("the Act" for short) for winding up of the respondent Company. The petitioner has to recover a sum of Rs.93,61,817=50 p. from the respondent Company. The petitioner has made several requests to make the payment. However, no payment has been made and hence, the petitioner issued notice dated 23-4-2002 to the respondent Company calling upon it to pay the outstanding amount of Rs.71,09,443=44 p. inclusive of interest till that date together with interest at 24 % per annum on the principal amount till payment. The said notice was sought to be served upon the respondent company on 30-4-2002 by Registered A.D.. However, the same was received back with with various endorsements of different dates from 30-4-2002 to 4-5-2002 stating "not available". The petitioner thereafter, issued another notice on 9-5-2002 at the factory address of the respondent company and the same was returned on 16-5-2002 as unserved with the postal endorsement "left". Thereafter, the petitioner has served the notice by Registered A.D. at the residential address of the director of the respondent company, Mr. Vidyut Sudhodrai Raja. However, the same was returned on 22-5-2002 with the endorsement "refused".

2. The petitioner, thereafter filed present petition before this Court. The Court has issued notice on 9-4-2004 making it returnable on 5-7-2004. On 5-7-2004, an affidavit of service has been filed on behalf of the petitioner company wherein it is stated that as per the direction of this Court to serve the notice over and above the registered office, on the Managing Director of the respondent company, the same was issued to the Managing Director of the respondent company but the said notice was returned back with an endorsement "refused". The Court has thereafter, observed that in view of the submissions made in the petition, which have remained uncontroverted, and in view of the detailed affidavit, the Court is of the opinion that the petition is required to be admitted. However, one more opportunity was given to the respondent company and order regarding advertisement was deferred and the matter was kept on 19-7-2004. On 19-7-2004 also nobody appeared on behalf of the respondent company and hence, the Court has passed the detailed order with regard to advertisement in English daily "Indian Express" and Gujarati daily "Loksatta-Jansatta", both Ahmedabad edition, fixing the date of final hearing on 13th August, 2004. On 13th August, 2004, nobody appeared on behalf of the respondent company and hence, the matter was adjourned today i.e. 19th August, 2004. Today, when the matter was called out, nobody appeared on behalf of the respondent company. The Court is therefore, left with no other alternative

but to pass final winding up order.

3. Mr. K.H.Kaji, the learned advocate appearing for the petitioner has submitted that the respondent company has admitted its liability to make the payment without raising any dispute, but it is unfortunate as it has no means to make such payment. Mr. Kaji has further submitted that the respondent company is unable to pay its dues. He has further submitted that the respondent company has not taken care even to the notice issued by this Court. From the conduct of the respondent company it appears that the respondent company is not controverting this petition and virtually the respondent company has accepted that the winding up order be passed in the petition.

4. In view of the facts stated and averments made in the petition and having gone through the documents which are produced before the Court and taking into consideration the submissions made by Mr. Kaji, the learned advocate appearing for the petitioner, the Court is of the view that this is a fit case where the Court has to pass an order of winding up and accordingly the winding up order is passed. The Official Liquidator attached to this Court is hereby appointed as the Liquidator of the respondent company and he is directed to take charge of the assets of the respondent company. While taking charge, the O.L. should give prior intimation to the respondent company as well as its directors and secured creditors of the respondent company and before appointing the security staff, the O.L. shall seek appropriate direction from this Court.

5. With the above directions and observations, this Company Petition is allowed without any order as to costs.

(K.A.Puj, J.)

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